

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

**FOURTH LEGISLATIVE DAY
THURSDAY, JANUARY 9, 2003**

Senate Chamber

President Risch called the Senate to order at 10:30 a.m.

Roll call showed all members present except Senators Noh, Schroeder, and Stennett, absent and excused.

Prayer was offered by Chaplain Gene Arnold.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senator Stennett was recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of January 8, 2003, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

Messages from the House

January 8, 2003

Mr. President:

I transmit herewith **HCR 3** which has passed the House.

JUKER, Chief Clerk

HCR 3 was filed for first reading.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills,

House Petitions, Resolutions, and Memorials

Senators Noh and Schroeder were recorded present at this order of business.

S 1001

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO MURDER; AMENDING SECTION 18-4004, IDAHO CODE, TO REVISE THE PUNISHMENT FOR MURDER; AMENDING SECTION 18-4004A, IDAHO CODE, TO PROVIDE THAT A NOTICE OF INTENT TO SEEK THE DEATH PENALTY SHALL INCLUDE A LISTING OF STATUTORY AGGRAVATING CIRCUMSTANCES, TO PROVIDE THAT THE STATE MAY AMEND THE NOTICE OF INTENT PRIOR TO TRIAL UPON A SHOWING OF GOOD CAUSE AND TO PROVIDE THAT THE COURT SHALL INFORM POTENTIAL JURORS AT THE OUTSET OF JURY SELECTION IF THE DEATH PENALTY IS NOT A SENTENCING OPTION; AMENDING SECTION 19-2126, IDAHO CODE, TO PROVIDE THAT IN FIRST-DEGREE MURDER CASES THE JURY SHALL NOT SEPARATE UNTIL COMPLETION OF THE SPECIAL SENTENCING PROCEEDING AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 19-2515, IDAHO CODE, TO REVISE PROVISIONS RELATING TO SENTENCING IN CAPITAL CASES; PROVIDING SEVERABILITY; PROVIDING FOR APPLICATION OF THE ACT; AND DECLARING AN EMERGENCY.

S 1002

BY JUDICIARY AND RULES COMMITTEE AN ACT

RELATING TO THE SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT; AMENDING SECTION 18-8303, IDAHO CODE, TO DEFINE "CERTIFIED EVALUATOR"; AMENDING SECTION 18-8314, IDAHO CODE, TO PROVIDE THAT THE SEXUAL OFFENDER CLASSIFICATION BOARD SHALL ESTABLISH BY RULE PROCEDURES FOR THE APPROVAL OF CERTIFIED EVALUATORS, TO PROVIDE THAT THE BOARD SHALL ESTABLISH BY RULE CERTIFICATION AND RECERTIFICATION FEES WITHIN STATUTORY LIMITS, AND TO PROVIDE RULEMAKING AUTHORITY FOR THE BOARD; AMENDING SECTION 18-8316, IDAHO CODE, TO PROVIDE PROPER TERMINOLOGY AND TO PROVIDE THAT THE BOARD SHALL COMPILE A CENTRAL ROSTER OF CERTIFIED EVALUATORS; AND AMENDING SECTION 18-8317, IDAHO CODE, TO CLARIFY THAT PSYCHOSEXUAL EVALUATIONS SHALL BE CONDUCTED BY CERTIFIED EVALUATORS OR A MENTAL HEALTH PROFESSIONAL EMPLOYED BY THE DEPARTMENT OF CORRECTION IN ACCORDANCE WITH STANDARDS ESTABLISHED BY RULE OF THE BOARD.

S 1001 and **S 1002** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

HCR 3, by Denney and Jaquet, was introduced and read at length.

Moved by Senator Davis, seconded by Senator Stennett, that all rules of the Senate interfering with the immediate consideration of **HCR 3** be suspended. The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Kennedy, Keough, Little, Lodge, Malepeai, Marley, McKenzie, McWilliams, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 35.

More than two-thirds having voted in the affirmative, the President declared the rules suspended and announced that **HCR 3** was before the Senate for final consideration.

On motion by Senator Davis, seconded by Senator Stennett, **HCR 3** was adopted by voice vote, title was approved, and the resolution ordered returned to the House.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

JOINT SESSION

Pursuant to **HCR 3**, the hour of 11 a.m. having arrived, the members of the Senate entered into the House Chamber and met in Joint Session with Speaker Newcomb presiding.

Roll call of the House showed all members present.

Roll call of the Senate showed all members present.

On request by Representative Denney, granted by unanimous consent, the Speaker appointed three committees to wait upon the Supreme Court Justices, the elected officials, and the Governor and escort them to the House Chamber.

The Speaker appointed Senators Stegner and Malepeai and Representatives Field and Boe as the committee to wait upon and escort the Supreme Court Justices to the House Chamber.

The Speaker excused the committee.

The Speaker appointed Senators Sorensen and Brandt and Representatives Bedke and Martinez as the committee to wait upon and escort the elected officials to the House Chamber.

The Speaker excused the committee.

The Speaker appointed Senators Cameron and Marley and Representatives Crow and Cuddy as the committee to wait upon and escort the Governor to the House Chamber.

The Speaker excused the committee.

The committees appointed by the Speaker returned and escorted the Supreme Court Justices, the elected officials, and the Governor into the House Chamber where they were presented to

the Joint Session by the Speaker.

The Speaker introduced His Excellency, the Governor of the State of Idaho, Dirk Kempthorne, and the following Budget Address was delivered by the Governor:

Mr. Speaker. Mr. President. Fellow Constitutional Officers. Distinguished members of the Legislature. Distinguished members of the Judiciary. Fellow citizens of Idaho.

Thank you for having me back so soon. I wasn't sure that you'd invite me after Tuesday night's message.

The message I delivered was difficult. But, after the speech, Patricia and I went home ...and I have to admit...to quote Lou Holtz, "I slept like a baby...I woke up every two hours crying."

And speaking of Lou Holtz...who is a great college football coach...there's another great college football program with a great coach in Dan Hawkins right here...ranked 12th in the nation and champions of the Humanitarian Bowl...our Boise State Broncos...

Just two days ago I began a discussion with you and the people of Idaho about the stark reality that we're facing together. Much has changed in the past two years...but we must resolve not to be victims of change. We must and we will be the authors of our own destiny.

As an individual, I did not look forward to delivering this type of message...it is not in my fiber.

But in the end, I concluded that this is in the best interest of our citizens.

The decisions we face have serious implications for Idaho...and for our future.

I know that many of you share my belief in limited government. I know that we agree that government should be lean.

The prospect of a tax increase is unsettling and it should be. We must never ask the citizens to sacrifice their hard-earned dollars unless it is truly needed to provide the essential services they expect and deserve.

We have cut government for the past two years. We reduced spending, found efficiencies, and began a process of streamlining government that continues. We have cut the fat...and we cut into the muscle.

We are not asking our citizens to pay more to expand government. We are asking them to participate in ensuring that we can meet the critical needs of the people of Idaho...today and into the future.

And Ladies and Gentlemen, while we look ahead to FY 04, our work for FY 03 is not yet finished. While we haven't had to call a special session, there's still more to do in the current fiscal year.

A year ago, when you set the current budget, it was based on a projection of a 6.6% revenue growth over the previous year.

That has not been the case and so in August, the revenue projection was revised downward.

That created a gap between what was appropriated and what we anticipated our revenues would be through the end of the fiscal year.

After we lowered our revenue expectations in August, it was a hopeful sign to then see the next five consecutive months' revenues exceed expectations. Does the trend continue in December's receipts? No. Unfortunately, we're down by \$3.5 million.

After getting through half the year with a \$30 million cushion, I had hoped it would continue...that in six months we would have a \$60 million cushion...but the current information doesn't show that. And the economists indicate that it will be wiped out in the coming months.

In order to finish FY 03 in the black – in addition to making permanent the 3.5% hold backs I ordered this year, we must also tap our remaining reserves:

\$5 million from the Risk Management Fund surplus

\$35 million from the Permanent Building Fund maintenance account

\$13 million from the remaining construction projects in the Permanent Building Fund

\$61 million from the Millennium Fund

\$8.6 million from the Budget Stabilization Fund

And the final element to get us through FY 03 is to make the implementation date of the 1.5 cent sales tax May 1, 2003, which will generate \$18.4 million.

That balances our FY 03 budget, maintains the core functions of state government and sets the backdrop for the FY 04 budget that I submit to you today.

I know you will now take the time necessary to immerse yourselves in this issue. I think – in time – you'll find that our conclusions will be much closer than you might believe they are now.

So, as you go through this, may I respectfully ask you to "keep your powder dry."

Now, let me fill you in on the details and I will not embellish them, nor sugarcoat them.

Here are the facts...

FACT: We have nearly a \$200 million gap to fill...that was all one-time money.

FACT: We have depleted virtually all reserve accounts...we've used the rainy day fund; we've used the permanent building fund...we've used the corpus and the payments to the Millennium Fund.

FACT: Since the recession, we have reduced government spending by nearly \$200 million.

FACT: Any portion of this problem that you attempt to solve with one-time money...merely postpones the problem until next year.

FACT: For FY 04 the majority of general fund agencies will again see reductions in their budgets.

FACT: This budget meets statutory obligations and caseload and enrollment increases with a general fund increase of less than 3%.

FACT: There are no increases for inflationary costs except a limited amount for medical inflation and in higher education.

FACT: While health care costs nationwide are expected to grow by up to 15%, this budget holds Medicaid growth to less than half of that...just 7%.

FACT: There is no CEC for state employees.

FACT: This is a maintenance budget.

We are at a critical juncture in this state...we can either move forward or we can fall victim to this national economy.

This will require all of us to do some soul searching. But I'll tell you the conclusion I ultimately came to. While personally uncomfortable, I truly believe that this is in the best interest of the citizens we serve.

Before we ever considered revenue enhancements, we focused on reducing the size, the scope and the cost of government. In this budget you will see the reductions.

No increase for the Department of Agriculture...and in fact, a decrease.

No increase for the Department of Commerce...and in fact, a decrease.

No increase for the Department of Parks and Recreation...and in fact, a decrease.

No increase for the State Board of Education...and in fact, a decrease.

No increase for the Military...and in fact, a decrease.

No increase to Public Broadcasting...and in fact, a decrease.

No increase to Vocational Rehabilitation...and in fact, a decrease.

No increase for the Division of Financial Management...and in fact, a decrease.

No increase for the Office of Species Conservation...and in fact, a decrease.

No increase for the Office of the Governor and in fact, a decrease.

No increase for the Lt. Governor...no increase for the Secretary of State...none for the Attorney General...no increase for the State Treasurer...or the Superintendent of Public Instruction...and none for the State Controller...and in fact, there are decreases.

Remember, these base reductions come on the heels of hold backs totaling 4% in FY 02, base reductions for FY 03 that were as high as 10%, and then a 3.5% hold back at the start of FY 03.

Since the recession started, we have dramatically reduced these agencies and others and we will continue to vigorously look for further savings.

We've made the cuts, we've gone to our savings accounts, and friends, the reserves are virtually depleted.

While Idahoans recognize that programs and services have been reduced during these difficult times, they also recognize that the state has a fundamental responsibility to provide for both current and future needs in education, public safety and vital health care services.

In education, the state is required to fund statutory increases. I have met my legal requirement with a base increase of \$16 million.

I have included, as we have for multiple years, technology funding. The figure I use is \$5 million...the same figure as this year...which is down from \$7 million from all previous years.

I have included \$2 million for achievement standards which will be matched with federal money because I will not allow us to miss our 2005 goal of having standards and achievement in place.

I have placed \$1.5 million for the program that we have committed to in order to cover the interest payments for school facilities.

The final category in public education is the discretionary account, which this year is \$8.4 million and I have reduced that by \$5 million to \$3.3 million next year.

It is lean, recognizing that we are in tough times. But it meets ALL statutory requirements, showing our commitment that in good times or bad, we will continue to invest in the education of our children.

In higher education, I have provided a straight-line maintenance of current operations budget which does indeed address the effects of increasing enrollments of students.

Two years ago, you also approved construction projects on each of the college and university campuses. Those projects were placed on hold when the recession hit.

Allowing those projects to go forward now will have a tremendous economic impact in each region of the state, immediately creating hundreds of high paying construction jobs, as well as benefitting thousands of other workers and businesses.

These buildings will be used for decades to come. So, to pay for them over the course of 20 years, but to have their use now is a tremendous benefit.

Compare this with constructing these buildings one at a time over the next 20 years. The need is immediate, such as the Life Science Building at North Idaho College so that we can meet the critical shortage of nurses.

While this meets the pressing needs at our colleges and universities, this is also true economic stimulus. This is a win-win opportunity with low interest rates, and the payments come from the Permanent Building Fund...not the general fund.

In a down economy, a growing number of Idahoans return to college to sharpen skills or obtain the knowledge that will allow them to improve their employment opportunities.

One of the few enhancements in this budget is in the Special Programs area where I have taken the needs-based scholarships from their current funding level and added \$1 million.

My budget recommends maintaining the Robert R. Lee Promise Scholarships at the \$250 level per semester.

I have put education first.

And to care for children, pregnant women, the disabled, and the elderly, we must continue to ensure the stability of Medicaid. But we must also continue our efforts to stem the meteoric rise in Medicaid costs.

This year, my budget incorporates a care management program for developmental disability and mental health populations. We've been discussing utilization management for three years ...it's now time to quit discussing and start implementing this measure that will save taxpayers millions.

With the significant reforms we've put into place over the past two years, we have saved nearly \$140 million. We will continue to find efficiencies. But we must continue to protect the services to the most vulnerable.

We are maintaining our efforts with children's mental health...and I believe through this work of the past four years, we will finally end the Jeff D. lawsuit after 24 years.

We will also continue to be a partner with counties by funding the Catastrophic Health Care Fund. We will address the expense of caring for indigent persons after the \$10,000 deductible is met by the counties, and we will continue to provide one-time relief by reducing the deductible from \$10,000 to \$5,000

for those with tobacco-related cancers and respiratory diseases.

Even in the midst of a financial crisis, we must never forget our commitment to our veterans. For those who have paid the supreme sacrifice so that we may have the opportunity to debate the future of our course, I honor the commitment to continue the development of the Veteran's Cemetery.

We must maintain our scheduled commemoration date of July 4, 2004. And remember, we are the last state in the Union to provide a cemetery for our veterans.

In the Department of Correction, in order to meet the rate of growth in the prison population, my budget provides for the operating costs of new beds at the South Idaho Correctional Institution and the Idaho Correction Center.

We have seen an increase in those who have qualified for parole in the past six months. With this increase, we must also increase the number of Probation and Parole officers...to provide proper supervision and help those who have been released begin their transition back into society and stop the revolving door.

Many of you, on the North Idaho Legislative Tour, commented on the impacts of my Rural Initiative. You heard from the local officials and saw, first hand, the impact of our economic development efforts in rural Idaho. We've helped communities create jobs and build the infrastructure that will open future doors to economic opportunity. We must continue these efforts and that commitment to rural Idaho is maintained in my budget.

We have outstanding public employees...they are helping us get through this. And while I wish it were otherwise...there are no across-the-board salary increases in this budget - there's no CEC. And yet, there is funding to ensure that health care coverage for our workforce is maintained without significant reductions in coverage or dramatic increases in premiums.

You will recall that we did not provide any money for salary increases last year, and while there is no recommendation or money provided in this year's budget, I recognize that our current employees have stepped up to do more for our citizens without the additional compensation.

Therefore, where there are salary savings because of vacancies or increased efficiencies, I recommend we give our managers flexibility to address outstanding performance.

My FY 04 budget includes a revenue projection of 4.1% growth over FY 03. But you will see that this growth is consumed by the increases in maintenance costs...growth in caseloads and enrollments...and rising costs of health care.

It will simply cost more next year to perform the same vital services we provide this year. And still, the revenue growth we've projected does nothing to address the nearly \$200 million gap from one-time money in the budget.

To get us out of that predicament, and allow us to be prepared once the economy begins to recover, I have

recommended a sales tax increase of 1.5 cents. That will generate \$240 million a year.

I am recommending we begin this new rate on May 1 of this year so that we can generate one month worth of additional revenue to help with our current budget.

This will keep our FY 03 budget in the black and allow us to keep a balance of \$18 million in the state rainy day fund - a responsible measure to guard against future shortfalls, and a necessary measure to protect our state bond ratings.

And by implementing this measure early, with a sunset of June 30, 2006, we can provide immediate relief while also providing stability in the tax structure as the economy fully recovers.

I am grateful to Mayor Linda Milam and Mayor Nancy Merrill who are the President and Vice-President of the Association of Idaho Cities, who stated in a letter I received yesterday, "We support all revenue from the proposed temporary increase in the sales tax going directly to the state's general fund."

And the Idaho Association of Counties has indicated the same support.

I recommend increasing the Grocery Tax Credit by \$5 per person at a cost of \$5.5 million.

Increasing the Cigarette Tax by 34 cents a pack will generate \$29 million in additional revenue. My recommendation is to begin this new rate on June 1, 2003 so that we realize the full amount in FY 04.

Of the \$264 million in additional revenue, 94% is necessary to solve the one-time money dilemma and begin paying back what we borrowed to fund education and the other critical services in the current fiscal year.

We must begin to rebuild the Budget Stabilization Fund. We don't know whether we have seen the end of this economic downturn, or what might happen if we go to war.

I'm serious about the sunset on the sales tax, and rather than use those revenues to expand government, we need to ensure that we are buffered against future economic storms.

We must begin to restore the corpus of the Millennium Fund. We will rely upon this fund to get through the current fiscal year, but we must continue to address the effects of tobacco on our youth and health care system by partially replenishing this important endowment in FY 04. When the next payment comes in April, we estimate the fund will be \$55 million.

And, of critical importance, are \$21 million worth of maintenance projects we deferred this year. Many of these projects are at educational institutions and health facilities. Many of these involve life/safety compliance issues such as the installation of fire prevention and workplace protection systems.

With revenue growth projected at 4.1%, the total state budget for FY 04 is just over \$2 billion.

The proposals put forth in this budget represents sound financial planning. The funding requests have been closely reviewed.

New programs and major expansions have been eliminated. The funding needs of education have been maintained and the critical needs of health and public safety have been met.

We have solidified our commitment to the present, as well as prepared for the future. We have not fallen back, and we are moving ahead...responsibly.

We have provided for jobs through the restoration of the deferred maintenance program throughout the state and the construction projects on our education campuses. We have kept our safety nets in place, and we have convinced the financial markets that – of all the states – Idaho is prepared to tackle the problems of the day, and the future, in a pragmatic and dutiful manner.

As I pointed out in the State of the State message the other night, tough choices have been made in the past, and will need to be made in the future.

And fellow Idahoans, I have a lot of confidence in this Legislature. I believe that this 57th Legislature is equal to the daunting task before us.

There has been a lot placed upon our shoulders. But by standing together, shoulder to shoulder...we will share the weight and solve the problem.

A 1st Century Roman philosopher offered this counsel. "First say to yourself what you would be, then do what you have to do."

Some two thousand years later, that is still sound advice for the challenges we face as a state.

I ask each of us: "What kind of Idaho do we want?" And then, what must we do?

As we go through this process, we may well have disagreements, but let's contend with problems and issues...not with each other.

We can demonstrate leadership, or we can fail to lead. Each path holds enormous consequences for the future.

Let's take the path of leadership together.

Thank you.

The Speaker thanked Governor Kempthorne for his message.

On motion by Representative Denney, seconded by Representative Jaquet, by voice vote the Budget Address was ordered spread upon the pages of the Senate and House Journals.

The committees came forward and escorted the Governor, the Supreme Court Justices, and the elected officials to their chambers and offices respectively, and were, on their return, thanked and discharged by the Speaker.

On motion by Representative Denney, seconded by Representative Jaquet, by voice vote the Joint Session was dissolved.

The appointed committee came forward and escorted the Senators from the House Chamber.

The members of the Senate returned to the Senate Chamber.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Burkett, by voice vote the Senate adjourned at 11:55 a.m. until the hour of 10:30 a.m., Friday, January 10, 2003.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary